



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JULY 06, 2022

IN THE MATTER OF:

Appeal Board No. 623410

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 623408, 623409, 623410, 623411, 623412 and 623413, the Board, on its own motion under Labor Law § 620(3), reopened the decisions of

the Administrative Law Judge filed, March 11, 2021, which granted the claimant's application to reopen, overruled the timeliness objection relating to the reporting determination, and sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 9, 2020 through August 10, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$2,142 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$1,800 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance (LWA) benefits of \$300 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 24 effective days and charging a civil penalty of \$321 on the basis that the claimant made willful misrepresentations to obtain benefits; and holding the claimant ineligible to receive benefits, effective July 6, 2021 through July 26, 2021, on the basis that the claimant did not comply with certification requirements; and reducing the claimant's right to receive future benefits by 80 effective days on the basis that the claimant made willful misrepresentations to obtain benefits; and holding the claimant ineligible to receive benefits, effective November 8, 2019 through August 8, 2020, on the basis that the claimant did not comply with reporting requirements.

At the combined hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made to issue of the claimant's application to reopen, the timeliness objection and failure to comply with reporting requirements. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record with respect to these issues and, therefore, are adopted as the findings of fact and the opinion of the Board, except we further conclude that as the claimant's claim was deemed effective March 9, 2020, the beginning date of the ineligibility determination should be modified from November 8, 2019 to March 9, 2020. As the reason for her presence in Indonesia was for health reasons, this does not excuse her failure to report (See Matter of Mikheil, 2022 N.Y. App. Div. LEXIS 3984; Matter of Inatomi, 116 AD3d 1332 [3d Dept 2104]).

DECISION: In Appeal Board Nos. 623408, 623409, 623410, 623411, 623412 and 623413, as to the issue of the claimant's application to reopen, the decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 623408, 623409, 623410, 623411, 623412 and 623413, the claimant's application to reopen is granted.

In Appeal Board No. 623413, the decision of the Administrative Law Judge is modified as follows, and, as modified, is affirmed.

In Appeal Board No. 623413, the timeliness objection is overruled.

In Appeal Board No. 623413, the initial determination, holding the claimant ineligible to receive benefits, effective November 8, 2019 through August 8, 2010, on the basis that the claimant did not comply with reporting requirements, is modified to be effective March 9, 2020 through August 10, 2010, and, as so modified, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

In Appeal Board Nos. 623408, 623409, 623410, 623411, 623412, our review of the record reveals that the case should be remanded to hold a hearing on the

issues of availability, recoverable overpayment, willful misrepresentations and failure to comply with certification requirements. The Judge did not adjourn the case for the Commissioner of Labor to appear and provide evidence regarding what any advice the claimant received regarding availability and certification requirements (See Hearing Exhibits 10-11. 13). At the further hearing, the Commissioner should produce evidence regarding the claimant's awareness of the Claimant Handbook, the certification declaration, and any other advice from Department of Labor concerning these issues. The relevant portion of the Handbook should be entered into evidence in the appropriate manner.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 623408, 623409, 623410, 623411, 623412, the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of availability, recoverable overpayment, willful misrepresentations and failure to comply with certification requirements, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the issues of availability, recoverable overpayment, willful misrepresentations and failure to comply with certification requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER